

## REMARKS

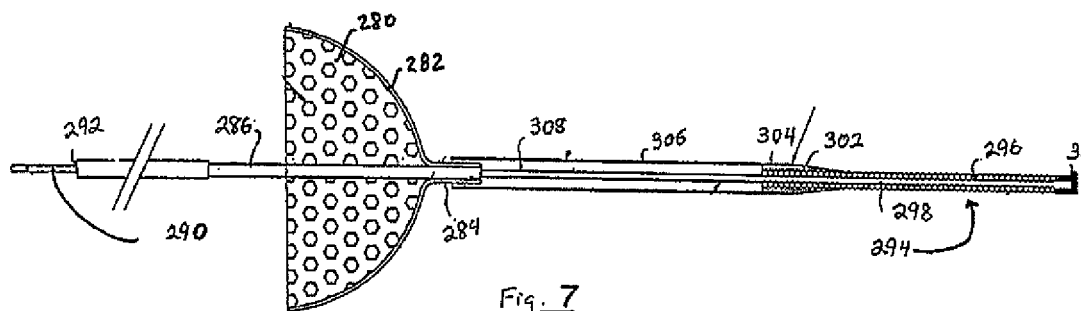
### Amendments to the Claims

Claim 4 has been amended. The amendment to Claim 4 is supported by the specification and no new matter has been added. Claims 4-14, 16, 17, 20-29 and 31-33 are currently pending. Reconsideration and allowance of Claims 4-14, 16, 17, 20-29 and 31-33 in light of the present remarks is respectfully requested.

### Discussion of Rejection of Claim 4 under 35 USC § 102

Claim 4 is rejected under 35 USC § 102 as being anticipated by U.S. Patent Publication No. 2002/0138094 to Borillo, et al. (hereinafter "Borillo"). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (M.P.E.P. § 2131). Applicant respectfully submits that Claim 4 is not anticipated by Borillo for at least the reasons discussed below.

Claim 4 recites that "the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element[.]" Applicant respectfully submits that this limitation is not taught or suggested by Borillo. Borillo discloses a vascular filter system for capture and retrieval of emboli comprising a porous filter membrane and a filter membrane support structure. The Examiner identifies paragraph [0056] of Borillo as disclosing the cited limitation. Paragraph [0056] describes Fig. 7 which is reproduced below:



Borillo teaches that the filter membrane is supported by strut wires 282, wherein the distal ends of the strut wires are attached to the distal portion of a tubular member. Further, a movable

core wire extends through a lumen in the tubular member. As core wire 290 is pulled proximally (or tubular member 286 is advanced distally), the distal ends of the strut wires 282 move into lumen 308 of sheath member 306 and collapse filter membrane 280. Thus, the shape of the basket is changed by forcing the basket into a lumen. Applicant respectfully submits that this does not meet the identified limitation of Claim 4. As described in the specification and shown in Fig. 14-16, the present application discloses that the shape of the collecting basket may be changed via manipulation of wire-like flexible adjustment elements while the basket is outside the channel element. This feature is recited in Claim 4 as cited above. The Examiner identifies the strut wires 282 of Borillo as wire-like flexible adjustment elements. However, the collecting basket is not deliberately oriented or shaped by the struts 282 while the basket is outside the channel element. Rather, orientation and shape are altered by moving the struts into and out of the channel element. For at least these reasons, applicant respectfully submits that Claim 4 is not anticipated by Borillo.

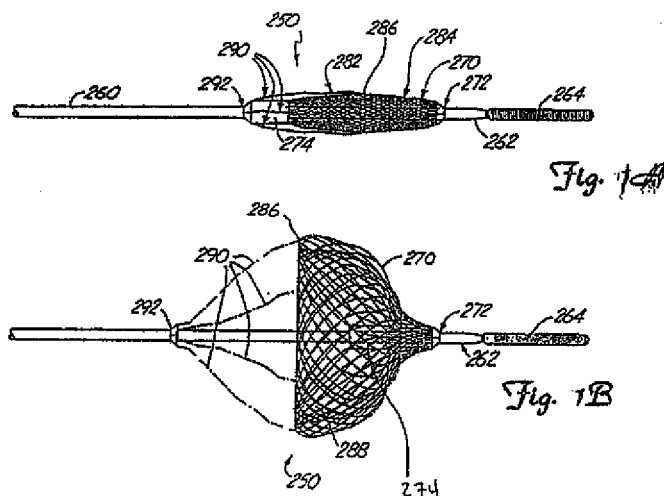
In addition, Claim 4 recites a “device comprising a proximal channel element and at least one compressible and expandable collecting basket having a distal end comprising an opening, said opening facing away from said channel element[.]” As illustrated above, Fig. 7 of Borillo illustrates a distal channel element, not a proximal one as recited. In other embodiments of Borillo, the opening of the basket faces towards the channel element, not away from the channel element as recited. For at least these additional reasons, Applicant respectfully submits that Claim 4 is not anticipated by Borillo.

#### Discussion of Rejection of Claim 4 under 35 USC § 103

Claim 4 is also rejected under 35 USC § 103(a) as being unpatentable over Kusleika, et al. (US 2002/0169474) in view of Borillo. Establishing *prima facie* obviousness requires a showing that each claim element is taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580. (CCPA 1974). Applicant respectfully submits that Claim 4 is not obvious for at least the reasons discussed below.

As discussed above, Claim 4 recites that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element[.]” Claim 4 also recites a “device comprising a proximal

channel element and at least one compressible and expandable collecting basket having a distal end comprising an opening, said opening facing away from said channel element[.]” As noted, Borillo fails to teach these limitations. Applicant respectfully submits that Kusleika fails to cure these defects. Kusleika discloses extraction devices for extracting objects from bodies. Fig. 1 and 2 show the extraction device 250 relied upon by the Examiner. Fig. 1 is reproduced below:



As described in the specification, the illustrated retrieval device is closed by sliding an external catheter distally which forces the basket to close. Para. [0017] – [0020]. Thus, as with Borillo, the shape and orientation of the Kusleika basket are manipulated by forcing the basket into a catheter. As described above, this catheter based manipulation does not meet the identified limitation of Claim 4. In particular, using a catheter to force the basket to close does not comprise “chang[ing] shape outside the channel element[.]” In addition, as with Borillo, Kusleika does not teach or suggest the basket opens away from the channel element. Indeed, as shown above, the basket of Kusleika is oriented towards the channel element. As neither Kusleika nor Borillo, teach the identified limitations of Claim 4, Applicant respectfully submits that the Examiner has not made a prima facie case for obviousness. Thus, Applicant respectfully requests that the Examiner withdraw the rejection.

In addition, Applicant respectfully submits that the combination of Borillo with the teachings of Kusleika is inappropriate. In particular, Applicant respectfully submits that it is inappropriate to combine references when the proposed modification renders the prior art unsatisfactory for its intended purpose. M.P.E.P. § 2143.01 (V). The Examiner uses two

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embodiments from Kusleika without explaining how they are combined, then uses the wires of Borillo in another unspecified way. The Examiner simply lists features from various figures of the references without explaining how they could be combined. Regardless, in performing any combination, the retrieval device of Kusleika would be rendered inoperable an unsatisfactory for its intended purpose. As described in the specification, the tethers 290 interact with the external catheter to close the basket. In particular, the catheter, as it is displaced distally, compresses the tethers and basket. Without the tethers, the catheter would not close the basket and the device would be inoperable. For at least this additional reason, Applicant respectfully submits that the combination of Kusleika and Borillo does not render Claim 4 obvious.

Discussion of Rejection of Dependent Claims under 35 USC § 103

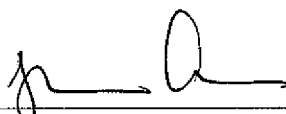
Claim 4 is the only pending independent claim. The balance of the pending claims depends from Claim 4. Applicant respectfully submits that the dependent claims are patentable for at least the same reasons as discussed above.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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